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28 TINA RICHARDSON  
as successor-in-interest  
to Decedent Caleb Slay

29  
30 **UNITED STATES DISTRICT COURT**  
31  
32 **FOR THE WESTERN DISTRICT OF MISSOURI**

1 TINA RICHARDSON, individually and as  
2 successor-in-interest to Decedent Caleb Slay,

3 Plaintiff,

4 vs.

5 UNITED STATES OF AMERICA;  
6 ANTHONY GASPERONI, individually and  
7 in his official capacity as an agent for the  
8 United States Drug Enforcement  
9 Administration; JOHN STUART,  
10 individually and in his official capacity as an  
11 agent for the United States Drug  
12 Enforcement Administration; DOES 1-20,  
13 inclusive, individually and in their official  
14 capacity as agents for the United States Drug  
15 Enforcement Administration; CITY OF  
16 SPRINGFIELD, a municipal entity; C.  
17 NUCCIO, individually and in his official  
18 capacity as sergeant for the Springfield  
19 Police Department; and DOES 21-40,  
20 inclusive, individually and in their official  
21 capacity as police officers for the Springfield  
22 Police Department,

23 Defendants.

CASE NO.: 6:23-cv-03337-RK

*(Honorable District Judge Roseann A.  
Ketchmark)*

**PLAINTIFF'S SUGGESTIONS IN  
OPPOSITION TO DEFENDANT UNITED  
STATES MOTION TO SUBSTITUTE  
UNITED STATES AS PARTY-DEFENDANT**

Complaint Filed: October 31, 2023

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF  
RECORD:**

Plaintiff, Tina Richardson (hereinafter "Plaintiff"), by and through her counsel of record, hereby submits the following Suggestions to the Court in Opposition to Defendant United States' Motion to Substitute the United States as Party-Named Defendant on Plaintiff's State Law Claims for Negligent Wrongful Death, Assault and Battery, Intentional Infliction of Emotional Distress, and Negligence. These Suggestions in Opposition shall be based upon the Federal Rules of Civil Procedure, West District of Missouri Local Rules, and the Orders of this Court. These Suggestions in Opposition are further based upon the attached Memorandum of Points and Authorities; upon

1 the records and files in this action; and upon such further evidence and argument as may be  
2 presented prior to or at the time of hearing the motion.

3 Dated: March 13, 2024

4 **BURRIS NISENBAUM CURRY & LACY**

5 */s/ Julia N. Quesada*

6 John L. Burris  
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8 Julia N. Quesada  
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10 Attorneys for Plaintiff,  
11 Tina Richardson

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# **MEMORANDUM OF POINTS AND AUTHORITIES**

## **INTRODUCTION**

3 This civil rights action against the United States of America, DEA Agent Anthony  
4 Gasperoni, DEA Agent John Stuart, and DOES 1 through 20 (hereinafter collectively “U.S.  
5 Defendants”), and the City of Springfield, Sergeant C. Nuccio, and DOES 21 through 40  
6 (hereinafter collectively “City Defendants”), was brought pursuant to violations of Title 42 U.S.C  
7 §§ 1983, and 1988; the Fourth and Fourteenth Amendments to the United States Constitution; Title  
8 28 U.S.C. § 2671, Federal Torts Claims Act; *Bivens v. Six Unknown Named Agents*, 403 U.S. 388  
9 (1971); Wrongful Death under Missouri Revised Statute § 537.080; and under the common law of  
10 Missouri. The claims arise from the egregious shooting and killing of Decedent Caleb Slay by  
11 DEA Agent Anthony Gasperoni, as well as the actions and omissions by DEA Agent John Stuart,  
12 and Springfield Police Sergeant C. Nuccio, on November 2, 2020. Decedent Caleb is survived by  
13 his mother, Tina Richardson.

15 It is undisputed that all parties to this action have been properly served with summons.  
16 However, Defendant United States now moves to substitute and designate the United States as  
17 party-defendant in the stead of Defendants Gasperoni and Stuart, in both their individual and  
18 official capacities, on Plaintiff's state law causes of action, pursuant to 28 U.S.C. section  
19 2679(d)(1). (Dkt. No. 28.) The causes of action which the United States seeks to be substituted in  
20 as party-defendant are Plaintiff's Sixth Cause of Action for Negligent Wrongful Death, Seventh  
21 Cause of Action for Assault and Battery, Eighth Cause of Action for Intentional Infliction of  
22 Emotional Distress, and Ninth Cause of Action for Negligence. (Id.) (See also Dkt. No. 1.) The  
23 United States contends that the Certification made by the First Assistant United States Attorney  
24 for the Western District of Missouri, Jeffrey P. Ray, (Dkt. No. 28-1), is sufficient to establish the  
25 scope of employment which DEA Agent Defendants Gasperoni and Stuart were working at the  
26 time of the incident.

1 Plaintiff submits that the related state common law intentional torts, and statutory  
2 violations for negligence and wrongful death pursuant to Missouri Revised Statute section  
3 537.080, are properly plead against Defendants Gasperoni and Stuart because whether the acts and  
4 omissions of Defendants Gasperoni and Stuart were committed within the scope of their  
5 employment as federal DEA agents is a disputed question of material fact and the Certification  
6 made thereto is subject to judicial review. As such, this Court should deny the United States'  
7 Motion to Substitute as Party-Defendant for Plaintiff's state law causes of action against  
8 Defendants Gasperoni and Stuart.

9

10 **STATEMENT OF FACTS**

11 The facts giving rise to this action are set forth in Plaintiff's Complaint filed with this Court  
12 on October 31, 2023. (See generally Dkt. No. 1) (See also Declaration of Julia N. Quesada  
13 (hereinafter "Quesada Decl."), ¶ 2). In the late afternoon on November 2, 2020, Decedent Caleb  
14 Slay (hereinafter "Decedent Caleb") was parked out front of his home in Springfield, Missouri,  
15 when two unmarked DEA vehicles pulled up and parked in front of his house. *Id.* The two DEA  
16 Agents, Anthony Gasperoni and John Stuart, were surveilling the area. *Id.*

17 As Decedent Caleb began walking up his driveway to the front door of his house,  
18 Defendant Gasperoni ordered Decedent Caleb to stop, and Decedent Caleb complied. (Quesada  
19 Decl. ¶ 3). Decedent Caleb informed Defendant Gasperoni of his legal firearm, then slowly  
20 extended both hands out in front of his body showing Defendant Gasperoni that he was not holding  
21 any weapon and did not pose any threat. *Id.*

22 During this interaction, Defendant Gasperoni took hold of Decedent Caleb's wrists while  
23 Defendant Stuart approached from behind without any warning. (Quesada Decl. ¶ 4). Defendant  
24 Stuart grabbed Caleb and one of the Defendant Agents, and Decedent Caleb, fell to the ground. *Id.*  
25 While the Defendant Agent and Decedent Caleb were on the ground, Defendant Gasperoni  
26 deployed his taser against Decedent Caleb's neck. *Id.* Defendant Gasperoni then took out his  
27 firearm and without warning fired at least three bullets at Decedent Caleb, striking Decedent Caleb  
28 in the head twice. *Id.*

1 Springfield Police Officers were dispatched to the scene after reports of shots fired.  
2 (Quesada Decl. ¶ 5). Springfield Police Department Sergeant, C. Nuccio (hereinafter “Defendant  
3 Nuccio”) was one of the first officers on scene after the shooting. *Id.*

4 Defendant Nuccio approached Decedent Caleb who was visibly bleeding from the head  
5 and severely injured. (Quesada Decl. ¶ 6). Defendant Nuccio made the determination that  
6 Decedent Caleb did not have a pulse and did not require immediate medical attention. *Id.*  
7 Consequently, Defendant Nuccio prevented emergency medical responders from immediately  
8 rendering aid and life saving measures to Decedent Caleb. *Id.* Emergency medical personnel were  
9 permitted to tend to Decedent Caleb several minutes later and, contrary to Defendant Nuccio’s  
10 initial determination, a low pulse was found. *Id.* Decedent Caleb succumbed to injuries and died  
11 in his front yard. *Id.*

12 Defendant Gasperoni works in conjunction with the Springfield Police Department  
13 (“SPD”) and has an assigned credential number (# 503951) and badge number. (Quesada Decl. ¶  
14 7, Ex. A at 3). At the time of this encounter, Defendants Gasperoni and Stuart were assisting a  
15 local law enforcement task force. (Quesada Decl. ¶ 7, Ex. A at 3) (Quesada Decl. ¶ 8, Ex. B at 3).  
16 Defendants Gasperoni’s and Stuart’s involvement were initiated by City of Springfield Task Force  
17 Officer, Nick Mittag (“TFO Mittag”). *Id.* TFO Mittag contacted Defendants Gasperoni and Stuart  
18 for assistance with mobile surveillance. *Id.* Defendants Gasperoni and Stuart were surveilling a  
19 red car in a Wal-Mart parking lot for several minutes before they followed the car to a residential  
20 street where Decedent Caleb lived. (Quesada Decl. ¶ 7, Ex. A) (Quesada Decl. ¶ 8, Ex. B). When  
21 Defendants Gasperoni and Stuart made contact with the drivers of the subject cars, Defendant  
22 Stuart announced “police” as he approached and was wearing a vest that said “police” on it.  
23 (Quesada Decl. ¶ 8, Ex. B at 10-12). Defendants Gasperoni and Stuart were wearing plain clothes  
24 at the time of the incident, they were assisting SPD Task Force doing local law enforcement  
25 functions. *Id.*

Thus, there are questions of fact as to whether Defendants Gasperoni and Stuart were acting within their scope and employment with the DEA. As such, United States' Motion to Substitute as Party-Defendant for Defendants Gasperoni and Stuart as to Plaintiff's state law causes of action should be denied.

## ARGUMENT

“The remedy against the United States ... for injury ... from the negligent or wrongful act of any employee of the Government while acting within the scope of his office or employment is exclusive....” 28 U.S.C. § 2679(d)(1). The immunity is triggered when the Attorney General or his designate certifies that federal employees have been sued for conduct within the scope of their employment. *Brown v. Armstrong*, 949 F.2d 1007, 1010 (8th Cir. 1991). “Upon certification ... the United States shall be substituted as the party defendant.” 28 U.S.C. § 2679(d)(1). “When the government moves for substitution, the Attorney General's certification, although subject to judicial review, is *prima facie* evidence that the employee's challenged conduct was within the scope of employ. Therefore, the burden of altering that status quo is on the plaintiff, who must come forward with specific facts rebutting the government's scope-of-employment certification.” *Brown v. Armstrong*, 949 F.2d 1007, 1010 (8th Cir. 1991) (internal quotations omitted). “To rebut the certification and obtain discovery, a plaintiff must alleg[e] sufficient facts that, taken as true, would establish that the defendant['s] actions exceeded the scope of [his] employment... If a plaintiff meets this pleading burden, he may, if necessary, attain limited discovery to resolve any factual disputes over jurisdiction.” *Taylor v. Clark*, 821 F.Supp.2d 370, 373 (D.D.C. 2011) (internal quotations omitted), citing, *Wuterich v. Murtha*, 562 F.3d 375, 380 (D.C.Cir.2009); see also *Osborn v. Haley*, 549 U.S. 225, 229 (2007).

Here, Plaintiff maintains that there is a genuine dispute of material facts as to whether Defendants Gasperoni and Stuart were acting within the scope of their employment with the DEA. Specifically, Defendants Gasperoni and Stuart were both called by a Springfield Task Force Officer, TFO Mittag. Defendants Gasperoni and Stuart were surveilling a red car as part of the

1 mobile surveillance initiated by the local task force. Neither Defendant Gasperoni, nor Defendant  
2 Stuart encountered Decedent Caleb while out on assignment for the DEA, they were assisting local  
3 law enforcement. Moreover, Defendant Gasperoni, although a DEA agent, works for the  
4 Springfield Police Department and operates under an assigned SPD credential number and badge  
5 number. Similarly, Defendant Stuart was wearing a body vest that was marked as “police” and  
6 further announced himself as “police” during the encounter. There remain questions of fact as to  
7 whether the acts and omissions of Defendants Gasperoni and Stuart were acting within their scope  
8 of employment with the DEA at the time they encountered Decedent Caleb and exercised lethal  
9 force. Therefore, the United States should not be substituted as Party-Defendant for Plaintiff’s  
10 state law claims against Defendants Gasperoni and Stuart.

12 **CONCLUSION**

13 Based on the foregoing, Plaintiff respectfully requests that this Court deny the United  
14 States’ Motion to Substitute as Party-Defendant in the stead of Defendants Gasperoni and Stuart  
15 as to Plaintiff’s state law claims.

16 Respectfully submitted,

17 Dated: March 13, 2024

**BURRIS NISENBAUM CURRY & LACY**

19 By: /s/ Julia N. Quesada

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